

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ASCEND GEO, LLC,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-09-2886
	§	
YOY GEOSPACE CORPORATION,	§	
Defendant.	§	

MEMORANDUM AND ORDER

This patent case is before the Court on the Reurged Motion to Stay [Doc. # 51] filed by Defendant OYO Geospace Corporation (“OYO”). OYO seeks a stay pending a reexamination of the patent in suit that is currently being conducted by the United States Patent and Trademark Office. Plaintiff Ascend Geo, LLC (“Ascend”) neither filed a response to the Motion nor requested additional time to do so. Pursuant to the Local Rules of the United States District Court for the Southern District of Texas, failure to respond to a motion is taken as a representation of no opposition. S.D. TEX. R. 7.3, 7.4.

The decision whether to stay a patent infringement lawsuit pending a reexamination of the patent-in-suit is entirely within the Court’s discretion. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988). In deciding whether to exercise its discretion to stay this case pending reexamination, the Court considers (1)

any showing that the non-movant will be unduly prejudiced; (2) whether the reexamination will simplify the issues; and (3) the stage of the litigation at the time the motion to stay is filed, specifically whether discovery has been completed and the case is ready for trial. *See Tesco Corp. v. Weatherford Int'l, Inc.*, 599 F. Supp. 2d 848, 850 (S.D. Tex. 2009).

There is no response in opposition to the Motion and, consequently, no showing of undue prejudice. The reexamination will simplify and potentially eliminate the issues in this case. The case is in a very early stage. Discovery is permitted until December 16, 2010, and the docket call and final pretrial conference are not scheduled until July 21, 2011. Based on the Court's consideration of these factors, and in the exercise of the Court's discretion to promote the efficient use of the resources of the Court and the parties, it is hereby

ORDERED that the Reurged Motion to Stay [Doc. # 51] is **GRANTED** and this case is **STAYED AND ADMINISTRATIVELY CLOSED** until the reexamination is completed and a motion to reinstate, if appropriate, is filed and granted.

SIGNED at Houston, Texas, this 11th day of **December, 2009**.



Nancy F. Atlas
Nancy F. Atlas
United States District Judge